



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Washington, DC 20036

FEB 19 2009

RE: MUR 5908
Honorable Duncan Hunter

Dear Mr. Canfield:

On July 20, 2007, the Federal Election Commission notified your client, Congressman Duncan Hunter of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on January 28, 2009, found that there is reason to believe Mr. Hunter violated 2 U.S.C. §§ 432(e)(1) and 441a(f) and 11 C.F.R. §§ 100.72 and 100.131 of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Your client may submit any factual or legal materials that he believes are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If your client is interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless your client notifies the Commission in writing that he wishes the matter to be made public.

If you have any questions, please contact me at (202) 694-1650.

Regards,


Camilla Jackson Jones
Attorney

Enclosures
Factual and Legal Analysis

cc: Honorable Duncan Hunter

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Duncan Hunter;
Hunter for President, Inc and
Bruce Young, in his official
capacity as Treasurer

MUR: 5908

I. INTRODUCTION

The complaint in this matter involved allegations that Duncan Hunter and his Leadership PAC, Peace Through Strength Political Action Committee ("PTS PAC"), violated various provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act") in connection with PTS PAC's activities in support of Hunter's 2008 Presidential campaign. Specifically, Complainant alleged that Duncan Hunter, through PTS PAC, accepted contributions to support his candidacy that were in excess of the legal limit while "testing the waters" to determine whether he would run for President, and that once Hunter officially became a candidate and registered a principal campaign committee, PTS PAC made excessive in-kind contributions to Hunter for President, Inc. ("Hunter for President").

II. FACTS

Duncan Hunter, then a member of Congress from California's 52nd Congressional District, was a candidate for 2008 Republican Presidential nomination. Hunter's campaign website indicates that his candidacy focused on the issues of "border enforcement," the "war on terror," and "fair trade." See www.gohunter08.com.

Hunter registered his Presidential exploratory committee with the Commission on January 8, 2007, filed his Statement of Candidacy on January 23, 2007, and registered his principal campaign committee for his Presidential campaign, Hunter for President, with the

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Commission on January 25, 2007. Various news reports, however, indicate that Hunter was publicly speaking about his bid for the Presidency as early as October 2006. Other news reports also indicate that Hunter was traveling to early primary states in support of his bid for the Presidency as early as October 2006 through January 23, 2007, the date he filed his Statement of Candidacy with the Commission.¹ Although it appears that Hunter was "testing the waters" for a Presidential bid, or perhaps, had already become a candidate under the Act from October 2006 through January 2007 (when he registered his principal campaign committee), Hunter for President did not report any contributions received or expenditures made by Hunter.

PTS PAC is a nonconnected, multi-candidate political committee that registered with the Commission in 2002. Duncan Hunter is the honorary chairman of PTS PAC, which appears to function as his Leadership PAC. PTS PAC also focuses on defense, border security, and trade issues. See PTS PAC Response. During approximately the last quarter of 2006, PTS PAC raised \$150,422 and spent \$101,148. PTS PAC made \$90,570.26 in disbursements in South Carolina, New Hampshire, and Iowa – the states Hunter reportedly traveled to in support of his Presidential bid – from October 2006 through January 25, 2007.

¹ He reportedly traveled to states such as South Carolina, New Hampshire, and Iowa. See John Van Doorn, Duncan Hunter's hard road ahead, North County Times, Dec. 6, 2006, at www.nctimes.com; Jason Spencer, 2008 Presidential Candidate Comes to Town, GoUpstate.com, Dec. 11, 2006, at www.goupstate.com; Associated Press, In Iowa, Hunter Touts Strong Defense, The Des Moines Register, Dec. 16, 2006, at www.desmoinesregister.com; James Pindell, Hunter to visit N.H. for first time since announcing presidential ambitions, The Boston Globe, Jan. 5, 2007, at www.boston.com.

III. ANALYSIS

A. Duncan Hunter's Candidacy

1. "Testing the Waters"

Under the Act, an individual becomes a candidate for federal office (and thus triggers registration and reporting obligations under the Act) when his or her campaign either receives \$5,000 in contributions or makes \$5,000 in expenditures. 2 U.S.C. § 431(2). There is, however, a limited exception for amounts raised and spent while an individual is "testing the waters" in order to decide whether to become a candidate. In such cases, the Commission's regulations provide that the terms "contribution" and "expenditure" do not include funds received or payments made solely to determine whether an individual should become a candidate. 11 C.F.R. §§ 100.72(a) and 100.131(a). Thus, before making a final decision as to whether to become a candidate, an individual may raise or spend more than \$5,000 without triggering candidate status if his or her activities are permissible "testing the waters" activities, which include, but are not limited to, conducting polls, making telephone calls, and travel. *Id.* Only funds permissible under the Act may be used for such activities. *Id.*

However, when an individual raises or spends more than \$5,000 and engages in activities indicating that he or she has decided to run for a particular office, or activities relevant to conducting a campaign, the individual is deemed to have crossed the line from "testing the waters" to "candidate" status under the Act. These activities include, but are not limited to: using general public political advertising to publicize the individual's intention to campaign for federal office; raising funds in excess of what could reasonably be expected to be used for exploratory activities or activities designed to amass funds to be spent after becoming a

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candidate; making or authorizing written or oral statements that refer to the individual as a candidate for a particular office; or conducting activities in close proximity to the election or over a protracted period of time. 11 C.F.R. §§ 100.72(b) and 100.131(b).

At an October 30, 2006 news conference, Hunter told the audience "As I finish my final two years as chairman of the Armed Services Committee and serve you, I am also going to be preparing to run for president of the United States in 2008." William Finn Bennett, Hunter announces possible run for president, North County Times, Oct. 30, 2006, at www.nctimes.com. When asked "why are you running" in an interview with a Newsweek reporter that same week, Hunter answered directly, without denying that he was running, "because I believe national security and a strong military are more important issues now than they have ever been." Jamie Reno, O&A: Duncan Hunter on '08 White House Bid, Newsweek, Oct. 31, 2006, at www.msnbc.msn.com. In that same interview, Hunter stated that "while I've announced that I am preparing to run for president, I have not made a formal announcement of my candidacy. This gives me a chance to make another speech." *Id.*

It appears that Hunter was also traveling to early primary states to publicize his Presidential campaign, and/or gauge support for his campaign, during the October 2006 through January 2007 period. In one trip to South Carolina, Hunter attended a reception "orchestrated by [the] Spartanburg County Republican Party Chairman" where he apparently discussed what his goals would be as president. Jason Spencer, 2008 Presidential Candidate Comes to Town, GoUpstate.com, Dec. 11, 2006, at www.goupstate.com. According to the news article, Hunter paid for the reception, and told attendees "I'm just asking me [sic] to keep you [sic] on your radar, because I'm going to be running." *Id.* (emphasis added). Hunter also told attendees: "I

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have the conservative ideas which are worth more than money, with respect to national defense, my border fence and the two-way street on trade. That's a message that will resonate with South Carolina, and gives me an excellent chance to win." *Id.* (emphasis added). Another article talked about Hunter's first visit to Iowa in December 2006, reporting that he attended a pancake breakfast and a pheasant hunt and discussed his presidential campaign. Associated Press, In Iowa, Hunter Touts Strong Defense, The Des Moines Register, Dec. 16, 2006, at www.desmoinesregister.com. Hunter also traveled to New Hampshire prior to filing his Statement of Candidacy. One article about his New Hampshire trip stated that during that trip Hunter "called himself the most conservative Republican in the Presidential sweepstakes. That, he said, 'gives me a chance,' despite his low name recognition." John DiStaso, California rep touts conservative appeal, The Manchester Union Leader, Jan. 9, 2007, at www.unionleader.com.

Based on statements made in October and December 2006, it appears that Hunter may have already decided to become a candidate prior to filing his Statement of Candidacy on January 23, 2007.² He advertised his intention to the public in a press conference and made statements acknowledging himself to be a candidate in media interviews. Having apparently already made the decision to run for President and advertising that decision to the general public, the only remaining question is when did he raise or spend \$5,000 in support of his campaign. Once he received \$5,000 in contributions or made \$5,000 in expenditures for his Presidential

² In MUR 5363 (Sharpton), the Commission determined that Rev. Sharpton had become a candidate when he crossed the contribution and expenditure threshold and published a book in which he unequivocally referred to himself as a candidate for President, even though he made statements after the publication of the book that he was "not officially declared as a candidate" and had "not decided finally" whether to run.

campaign, he became a "candidate" under the Act and was required to register and report as such with the Commission.

2. Candidate Status

Achieving "candidate" status triggers registration and reporting requirements for the candidate and for his or her principal campaign committee. Within 15 days of becoming a candidate, the individual must file a Statement of Candidacy with the Commission that designates the candidate's principal campaign committee. 2 U.S.C. § 432(e)(1); *see also* 11 C.F.R. § 101.1(a). The principal campaign committee must file a Statement of Organization no later than ten days after it has been designated by the candidate, 2 U.S.C. § 433(a), and must also, in the case of a principal campaign committee for a Presidential candidate, file timely financial disclosure reports as required by 2 U.S.C. § 434(a)(3). All reportable amounts from the beginning of the "testing the waters" period must be reported on the first financial disclosure report filed by such committee, even if the amounts were received or expended prior to the current reporting period. *See* 11 C.F.R. §§ 104.3(a) and (b).

If an individual who has been "testing the waters" subsequently becomes a candidate, funds received or payments made for "testing the waters" are contributions and expenditures subject to the reporting requirements of the Act. 11 C.F.R. §§ 100.72(a) and 100.131(a). Such contributions and expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received or the payments made. *Id.* Accordingly, once Hunter became a candidate, his principal campaign committee was responsible for reporting all of the campaign-related expenses that he incurred during the "testing the waters" period.

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Although Hunter undoubtedly incurred expenses in connection with his travel from October through December 2006, Hunter for President reported no contributions or expenditures for that time period. It is unknown whether he was raising any money for his Presidential campaign during that time period. Hunter for President only reported two contributions and one expenditure prior to January 25, 2007 (all three occurring in January of 2007). It seems highly unlikely, however, that he would have incurred no other expenses and raised no other money between his October 30, 2006 announcement and filing his Statement of Candidacy in January 2007.

Therefore, the Commission finds reason to believe that Duncan Hunter violated 2 U.S.C. § 432(e)(1) and 11 C.F.R. §§ 100.72 and 100.131 by failing to report contributions received and expenditures made by Duncan Hunter while he was "testing the waters" for a Presidential bid.

B. Hunter for President: Duty to Report Contributions and Expenditures

While it is the candidate's responsibility to keep a record of contributions received and expenditures made while "testing the waters," those contributions and expenditures must be reported once he or she officially becomes a candidate and registers a principal campaign committee with the Commission. 11 C.F.R. §§ 100.72 and 100.131. The duty to file reports of receipts and disbursements then falls on the principal campaign committee. 2 U.S.C. § 434(a)(3); *see also* 11 C.F.R. §§ 104.3(a) and (b). As noted above, Hunter for President did not report any contributions or expenditures for the period from October 2006 through December 2006 when it appears that Hunter was either "testing the waters" or already a candidate. Therefore, the Commission finds reason to believe that Hunter for President, Inc. and Bruce Young, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a)(3).

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C. Excessive In-Kind Contributions from PTS PAC

While the available information shows that Hunter for President failed to report disbursements related to Hunter's travel to publicize his Presidential campaign from October 2006 through the beginning of January 2007, PTS PAC did report disbursements which may be related to Hunter's travel during this period. Specifically, PTS PAC reported \$20,185.26 in expenditures for food and beverage and "media services" in South Carolina in December 2006. According to news reports, Hunter was in South Carolina probably at least twice during the month of December. See John Van Doorn, Duncan Hunter's hard road ahead, North County Times, Dec. 5, 2006, at www.nctimes.com; Jason Spencer, 2008 Presidential Candidate Comes to Town, GoUpstate.com, Dec. 11, 2006, at www.goupstate.com. Therefore, it appears that PTS PAC may have paid some of Hunter's expenses for "testing the waters" and/or when he had already become a candidate but had not filed a Statement of Candidacy.

Therefore, the Commission finds reason to believe that Duncan Hunter and Hunter for President, Inc. and Bruce Young, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

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